

**DAM AND SEAWALL REPAIR OR REMOVAL FUND**

**CONTRACTOR:** TOWN OF XXXYVVXXVILLE, MA

**PROJECT NUMBER:** 50-20YR-TYPE-#

**CONTRACT ATTACHMENT A – SCOPE OF SERVICES**

*(to be added based on application proposal submitted)*

**CONTRACT ATTACHMENT B: MAXIMUM OBLIGATION AND BUDGET**

**MAXIMUM OBLIGATION:**

**Grant:** \$ XXX,000.00

**Loan:** \$ XXX,000.00

**BUDGET DETAILS:**

*Invoices may be submitted periodically, preferably monthly, for reimbursement of funds expended on the project up to the maximum amount of the award. 90% of the funds requested will be paid out upon submission of an invoice. The remaining funds due shall be paid only upon full and satisfactory completion of all Tasks under this contract.*

Anticipated Spending Schedule

	<u>Grant Funds</u>	<u>Loan Funds</u>
Fiscal Year 2014	\$ _____	\$ _____
Fiscal Year 2015	\$ _____	\$ _____
First Quarter (July 201X – September 201X)	\$ _____	\$ _____
Second Quarter (October 201X – December 201X)	\$ _____	\$ _____
Third Quarter (January 201X – March 201X)	\$ _____	\$ _____
Fourth Quarter (April 201X – June 201X)	\$ _____	\$ _____

*Note that the Grant portion of this agreement shall be for approved expenditures toward design, permitting, and preparation of bid package materials. Funds NOT used for these general purposes may not be used for construction costs but will be reclaimed by EEA. The Loan portion of this agreement shall NOT be increased.*

DAM AND SEAWALL REPAIR OR REMOVAL FUND

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**CONTRACT ATTACHMENT C: AWARD DOCUMENTATION FOR A PUBLIC BODY**

AGENCY: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

CONTRACTOR: TOWN OF XYYYYVXXVILLE, MA

PROJECT NUMBER: 50-20YR-TYPE-#

This attachment outlines the award granted by the Executive Office of Energy and Environmental Affairs (the Agency) and the schedule for payment of awarded funds, as well as the repayment of any loan executed between the Agency and the Contractor. The Agency shall provide financial assistance to the Contractor in the form of a grant, loan, or combination of the two.

Total Award: \$ X,000,000.00

The total amount of the Grant shall be \$ \_XXX,000.00

The total amount of the Loan shall be \$ XXX,000.00

These funds shall be provided as outlined in the Award Payment Schedule shown below.

AGENCY: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

BY: \_\_\_\_\_  
\_\_\_\_\_ Chief Financial Officer DATE

CONTRACTOR: TOWN OF XYYYYVXXVILLE, MA

BY: \_\_\_\_\_  
\_\_\_\_\_ Title DATE

**DAM AND SEAWALL REPAIR OR REMOVAL FUND**

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**AWARD PAYMENT SCHEDULE**

<b>Funds</b>	<b>Payment Method</b>	<b>Time of Payment</b>	<b>Funds Paid To:</b>
Grant	Reimbursement	Upon receipt of invoice(s) by community, with documentation of all approved expenditures attached. Funds may be withheld if periodic progress reports are not up to date.	Massachusetts Municipal Depository Trust (MMDT)  Account #: _____
Loan Payment 1  \$ XXX.00	Advance	Upon confirmation by the Agency that:  Tasks 1 and 2 are completed; Tasks 5, 6 and 7 are up to date. This includes the issuance of all applicable permits by the appropriate entities.	Massachusetts Municipal Depository Trust (MMDT)  Account #: _____
Loan Payment 2  \$ XXX.00	Advance	Upon confirmation by the Agency that:  In compliance with Task 4, the mid-construction inspection required by permits issued the appropriate agencies have been performed, the EEA project manager (or designee) was in attendance, and the permit(s) issuers is/are satisfied with the construction progress to date and support continuing construction to its full completion.	Massachusetts Municipal Depository Trust (MMDT)  Account #: _____

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**CONTRACT ATTACHMENT D: GENERAL OBLIGATION BOND** *(Municipal Awardees)*

**THE COMMONWEALTH OF MASSACHUSETTS**

**BORROWER:** Town of XYYYYVXXville

**GENERAL OBLIGATION BOND**

The \_\_\_\_\_ (hereinafter called the “Borrower”) in the County of \_\_\_\_\_ and in the Commonwealth of Massachusetts promises to pay to the Executive Office of Energy and Environmental Affairs (hereinafter called the “Agency”), or registers assigns, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) in installments as set forth below, which includes an interest rate of \_\_\_\_\_%:

<b><u>Schedule of Payments</u></b>						
<u>Payment Number</u>	<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Total Due</u>	<u>Remaining Balance</u>
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

**DAM AND SEAWALL REPAIR OR REMOVAL FUND**

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<b><u>Schedule of Payments</u></b>							
<u>Payment Number</u>	<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Administrative Fee</u>	<u>Total Due</u>	<u>Remaining Balance</u>
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							

Principal payments on this bond are payable at the offices of the Agency 100 Cambridge Street - Suite 900, Boston, Massachusetts 02114 on the 15<sup>th</sup> day of the month specified. Upon final payment of the principal of this bond the Agency shall cancel this bond and return to the Borrower.

This bond is the only instrument representing a borrowing of **\$XXX,000.00** issued by the Municipality pursuant to M.G.L. c. 29, §2III and regulations issued under 301 CMR 15.00 as well as M.G.L. c. 44, as amended, and a vote of the Borrower duly passed on the \_\_\_\_\_ (date of issue). This bond is issued for the purpose of defraying the cost of **repairs to the XXXYville Dam** as described in said vote and Contract # \_\_\_\_\_ issued by the Agency on behalf of the Commonwealth of Massachusetts.

The bond is transferable only upon presentation to the Treasurer of the Borrower with a written assignment duly acknowledged or proved. No transfer hereof shall be effectual unless made on the books of the Municipality kept by the Treasurer as transfer agent and noted thereon by the treasurer with a record of payments.

**DAM AND SEAWALL REPAIR OR REMOVAL FUND**

**CONTRACTOR:** TOWN OF XXXYVVXXVILLE, MA

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In Witness Whereof the Borrower has caused this bond to be signed by its Treasurer and countersigned by the Selectmen and the Seal of the Borrower to be affixed hereto as of the \_\_\_\_\_(date).

Countersigned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Treasurer

Selectmen

(Seal)

**CONTRACT ATTACHMENT D: FINANCE ASSISTANCE AGREEMENT  
BY AND BETWEEN:**

**THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS**

**AND**

**Town of XYYYYVVXXville**

This Finance Assistance Agreement is made by and between the Executive Office of Energy and Environmental Affairs, an agency of the Commonwealth of Massachusetts, with its principal place of business at 100 Cambridge Street – Suite 900, Boston, MA 02114, (“Agency” or “EEA”) and the Town of XYYYYVVXXville, an independent body politic and corporate and political subdivision of the Commonwealth duly organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at **232 Utopia Street, XYYYYVVXXville MA**.

WHEREAS, on \_\_\_\_\_ the Secretary of the Executive Office of Energy and Environmental Affairs awarded financial assistance to the **Town of XYYYYVVXXville** for the **repairs to the XYYYville Dam**.

WHEREAS, the Borrower intends to conduct, or is conducting, a project eligible under 301 CMR 15.00 (“Project”); and

WHEREAS, the Borrower filed an application in which it furnished information about the Project to the Agency; and

WHEREAS, EEA will provide financial assistance to the Borrower for its Project under certain terms and conditions, hereinafter provided.

NOW THEREFORE, in consideration of the foregoing and the promises contained herein, the Parties agree that the Agency will provide and the Borrower will accept financial assistance under the following terms and conditions:

**I. FINANCE SCOPE OF SERVICES**

The Borrower has entered into or will enter into, within twenty-four (24) months of the execution of this Agreement, a contract with a consultant or contractor for implementation of the tasks of Project, in accordance with the Borrower’s competitive procurement practice, and the scope of such work is listed in the Contract Scope of Services and Budget (Contract Attachment A).

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**II. FINANCIAL ASSISTANCE**

A. The Agency shall provide financial assistance to the entity in the form of a grant, loan, or combination of the two.

☐ The total amount of the Grant shall be \$ XXX,000.00.

☐ The total amount of the Loan shall be \$ XXX,000.00.

B. The Loan shall be governed by the attached loan agreement, which is incorporated herein by reference as Sub-Attachment D.

C. Upon completion of the tasks funded by any grant awarded from the Fund, as defined in the Scopes of Services in the award contract, the Agency shall initiate an electronic transfer of the total Loan to the following designed account of the Borrower:

Account Information: \_\_\_\_\_ Federal Tax ID No. \_\_\_\_\_

D. The Agency shall not be obliged to provide additional financial assistance above the total award amount regardless of additional project costs which may be incurred by the Borrower.

**III. EFFECTIVE DATE OF AGREEMENT**

This Agreement will take effect on the date of execution of both the Commonwealth of Massachusetts Contract ("Contract") for the project and this Finance Agreement. In the event that this Finance Agreement and the Contract are executed on different dates, the effective date of this Finance Agreement shall be the later of the two dates.

**IV. TERM**

The term of this Agreement shall begin upon the date of execution of this Agreement, and; unless otherwise terminated under Section XXV of this Agreement, shall be in effect until the Borrower fully repays the Loan to the Authority accordance with the terms of the Loan Agreement as evidence that the final payment has been discharged.

**V. PROJECT SCHEDULE**

Implementation of the project must begin within twenty four (24) months of execution of the Contract, including all Attachments. The project must comply with the Project Schedule listed in Sub-Attachment B.

It is the obligation of the Borrower to obtain all licenses, permits, easements, or any other approvals necessary to begin and successfully complete the Project.



VI. EXPENDITURE VERIFICATION REQUIREMENTS

A. Throughout the completion of the project Scope of Services, the Borrower shall submit progress reports to the Agency, which outline the overall progress of the project, the progress of the key project costs expended to date. The frequency and schedule for progress reporting is outlined in Contract Attachment A.

Progress reports shall be submitted to:

Executive Office of Energy and Environmental Affairs  
ATTN: John Clarkeson  
100 Cambridge Street – Suite 900  
Boston MA 02114

B. The Borrower shall append to each progress report information which documents eligible project costs, including, but not limited to, consultant and/or contractor invoices; labor, equipment, materials and other costs; and ancillary expenses. Time sheets and work summaries documenting any requests for force account work reimbursement must also be provided.

C. The Borrower shall exercise its best efforts to accomplish the project set forth in the contract scope of services within the budget established. In the event an increase or decrease in the total project cost is anticipated, or in fact occurs, the Borrower shall immediately notify the Agency in writing, and shall submit a status report including reasons for changes in project cost(s), work completed to date, total dollars expended to date, and an estimate of the cost required to complete the project.

VII. PROJECT INSPECTION

The Borrower shall make the project site and all project records available to the Agency staff for review during the course of the project. Agency staff may periodically conduct site visits and review records maintained by the Borrower to monitor the progress of work to insure that the project is: (1) proceeding substantially as defined in the contract scope of services; and (2) proceeding substantially within the project schedule.

VIII. PROJECT CLOSEOUT PROVISIONS

A. Upon completion of the project, the Borrower shall notify the Agency that the project is complete and shall notify, that all work included in the contract scope of services has been completed and performed. The Borrower shall submit to the Agency a project closeout package which shall include a summary of all project expenditures and the final project cost.

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B. If the final project cost is less than the award, the difference between the award and the final project closeout cost will be calculated and defined as the project “Shortage Amount”. While the existence of a Project Shortage Amount will not affect the Loan repayment amount or schedule, the shortage amount must be used by the Borrower to fund the next bond payment(s).

**IX. PROJECT AUDIT PROVISIONS**

A. The Borrower, its engineers, and its contractors shall maintain books, and other documents that pertain to and involve transactions related to this Agreement in accordance with generally accepted accounting principles. The Borrower, its engineers, and its contractors shall also maintain the financial information and data used by the engineers and contractors in the preparation or support of all invoices and progress reports. The Agency and any other duly authorized person shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours, upon ten (10) days notice and at the Agency’s expense. The Borrower, its engineers, and its contractors shall provide proper facilities for such access and inspection. All documents shall be kept for at least seven (7) years after either the final payment to the engineer or contractor or after the closeout of the project, whichever is later.

B. The Borrower agrees to include the working section IX. A., above, in all contracts and subcontracts hereafter awarded to third party contractors, vendors and service providers related to this Agreement.

C. Audits conducted by the Agency, or its duly authorized representatives, shall be in accordance with generally accepted governments auditing standards and establishes procedures and guidelines of the Agency. Such audits shall be conducted at the expense of the Agency upon ten (10) days notice.

D. The Borrower agrees to provide the Agency with a copy of the Borrower’s annual audited financial statements within a reasonable time after the issuance thereof, together with a certificate of the Borrower stating that the Borrower is in compliance with its obligations under this agreement.

**X. AUTHORITY TO EXECUTE AGREEMENT**

Prior to the execution of this Agreement, the Borrower shall take all steps necessary to authorize it to properly execute this Agreement.

**XI. GOVERNING LAW**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

XII. COMPLIANCE WITH LOCAL LAWS

The Borrower shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work by this Agreement unless specifically authorized to do so by notarized letter.

XIII. INVALIDITY OF PARTICULAR PROVISIONS

If any provision of this agreement shall to any extent be held invalid or unenforceable, the remainder of this agreement shall not be deemed affected thereby.

XIV. CONTRACTING/SUBCONTRACTING

The Borrower shall have no capacity to involve the Agency in any contract and shall not incur any liability on the part of the Agency.

XV. CHANGES TO SCOPE OF SERVICES

The Agency and the Borrower may, during the course of the project, mutually agree to revisions in the contract scope of services or project schedule. Such changes shall be incorporated into this Agreement by written amendment.

XVI. PROVISION OF CONTRACTS

The Borrower agrees to submit to the Agency an executed copy of each contract for engineering services, construction, or related services relevant to the contract scope of services.

XVII. EQUAL EMPLOYMENT OPPORTUNITY

The Borrower shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap status or national origin. The Borrower, its engineer(s), and its contractor(s) shall comply with all applicable laws and regulations pertaining to nondiscrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

XVIII. INDEMNIFICATION

The Borrower, at its expense, shall defend and shall indemnify and hold harmless the Agency, its members, officers and employees, including attorneys' fees, arising out of or resulting from any acts, errors or omissions or breach of contractual duties by the Borrower and anyone employed by it (including contractors, subcontractors and/or consultants and their employees) in performance of

this Agreement. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Agency which would otherwise exist.

XIX. MEMBERS, EMPLOYEES NOT LIABLE

No member or employee of the Agency shall be charged personally or held contractually liable by or to the Borrower under any term or provision of this Agreement or because of any breach thereof or because of its execution or attempt execution.

XX. INTEREST OF BORROWER

The Borrower covenants that its contractors, subcontractors and/or consultants presently have no interest and shall not acquire any interest direct or indirect, in the property to which this Agreement pertains or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Borrower further covenants that no person having any such interest shall be employed in the performance of this Agreement.

XXI. INTEREST OF EMPLOYEES; M.G.L.C. 268A

Neither Borrower, nor its contractors, subcontractors and/or consultants shall, during the term of this agreement, hire or employ on either a full-time or part-time basis any person or persons so long as such person shall be employed by the Agency and whose is relevant the management of the funds regulated by 301 CMR 15.00.

The Borrower acknowledges that the Agency is a state agency for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts Conflict of Interest statute). The Borrower agrees to take actions and to forbear from taking actions, as circumstances require, so as to be in compliance at all times with the said statute.

XXII. ASSIGNABILITY

The Borrower shall not assign any interest, in whole or in part, in this Agreement and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of the Agency.

XXIII. PAYMENT NOT A WAIVER

The Agency's payment to Borrower under this agreement or its review, approval acceptance of any actions by Borrower under this Agreement shall not operate as a waiver of any rights under this Agreement and the Borrower shall remain liable to the Agency for all damages incurred by the Borrower's failure to perform in accordance with the terms and conditions of this Agreement.

The rights and remedies of the Agency provided for under this Agreement in addition to any other rights or remedies provided by law. The Agency may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.

#### XXIV. TERMINATION OF THE AGREEMENT FOR CAUSE

If through any cause, the Borrower shall fail to fulfill in a timely and proper manner its obligations under this agreement (including performance of the contract scope of services, and/or compliance with the Project Schedule); or if it is determined that there is probable cause to believe that the Award was obtained on the basis of fraud, deceit, or illegality; or if the Borrower has failed to comply with the terms and conditions of this Agreement; the Agency shall hereupon have the right to terminate this Agreement by giving written notice to the Borrower of such termination and specifying the effective date thereof.

The Borrower agrees that if this agreement is terminated by the Agency, the Borrower shall immediately repay to the Agency the full amount of the Award which is identified in section II, above. The Borrower agrees that the loan shall not be affected by such termination and that the separate Loan Agreement shall remain in full effect.

#### XXV. FINANCE ASSISTANCE AGREEMENT SUB-ATTACHMENTS

Sub-Attachments to this Agreement are incorporated herein and are as follows:

Sub-Attachment A:	Project Certification – Scope of Services Summary
Sub-Attachment B:	Anticipated Project Schedule
Sub-Attachment C:	Authority to Execute Agreement
Sub-Attachment D:	Award Package and Loan Agreement

#### XXVI. PROJECT SPECIFIC ADDITIONAL TERMS AND CONDITIONS

- A. The community shall inform the Agency of the contract for the construction phase of the proposed rehabilitation project and forward a bid tabulation, executed contract, contractor notice to proceed letter, and date of pre-construction meeting.
- B. The community will inform the Agency of the date for Final Inspection of the proposed project.

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IN WITNESS WHEREOF, the parties have executed this agreement \_\_\_\_\_ day of \_\_\_\_\_(month)  
\_\_\_\_\_(year).

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

BY: \_\_\_\_\_  
\_\_\_\_\_, Chief Financial Officer AUTHORIZED SIGNATURE/DATE

BORROWER: Town of XYYYYVXXville

BY: \_\_\_\_\_  
\_\_\_\_\_, Name/Title AUTHORIZED SIGNATURE/DATE

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PROJECT NUMBER: 50-20YR-TYPE-#

FINANCE ASSISTANCE AGREEMENT

SUB-ATTACHMENT A: PROJECT CERTIFICATION – SCOPE OF SERVICES SUMMARY

Town of XYYYYVVXXville

Project No. 50-20YR-TYPE-#

Project Summary: The **repairs of the XYYYYville Dam** as proposed in the Application to the Dam and Seawall Repair and Removal Fund dated **DAY-MONTH-YEAR** and as further defined by Commonwealth of Massachusetts Contract Number \_\_\_\_\_ executed on \_\_\_\_\_.

FINANCE ASSISTANCE AGREEMENT

SUB-ATTACHMENT B: ANTICIPATED PROJECT SCHEDULE

<u>Item</u>	<u>Start Date</u>	<u>Anticipated Completion date</u>
Final Design Phase		
Permit Phase		
Bid Phase		
Construction Phase	On or before June 201X	

## FINANCE ASSISTANCE AGREEMENT

## SUB-ATTACHMENT C: AUTHORITY TO EXECUTE AGREEMENT

I hereby certify that the Town of XXXYVVXXville Board of Selectmen (hereinafter referred to as the "Borrower"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted, at a meeting of the governing body held on \_\_\_\_\_ (date) and duly recorded in office, to authorize, the Treasurer to act on behalf of the Borrower, as its agent, in executing agreements and performing any or all other actions necessary to secure for the Borrower financial assistance in the form of a loan for the completion of the project as may be made available to the Borrower from the Executive Office of Energy and Environmental Affairs (the Agency).

I hereby certify that \_\_\_\_\_ is the present incumbent of the position above, and do hereby certify:

1. That said meeting noted above was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, and a legally-sufficient number of members of the governing body voted in the proper manner for the adoption of said authorization; that all other requirements and proceedings under the law incident to the proper adaptation or passage of said authorization, including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I authorized to execute this certificate:
2. That if an impression of the seal has been affixed below, it constitutes the official seal of the Borrower and this certification is hereby executed under such official seal: but if no seal has been affixed, the Applicant does not have an official seal.

IN WITNESS WHEREOF, this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Print Name of Officer)

\_\_\_\_\_  
(Print Title)



DAM AND SEAWALL REPAIR OR REMOVAL FUND

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FINANCE ASSISTANCE AGREEMENT

SUB-ATTACHMENT D: AWARD PACKAGE and LOAN AGREEMENT

Total Project Cost: \$XXX,000.00

Total Project Award: \$ XXX,000.00

Award amount as Grant: \$ XXX,000.00

Award amount as Loan: \$ XXX,000.00

Interest Rate on Loan: X%

Net Obligation of Borrower: \$ XXX,000.XX

LOAN AGREEMENT, dated the \_\_\_\_\_ day of \_\_\_\_\_ (month, year) between the Executive Office of Energy and Environmental Affairs, a public instrumentality of The Commonwealth of Massachusetts (the “Agency”) having its principal place of business in Boston, Massachusetts and the Town of XXXYVVXXville (the “Borrower”).

WITNESSETH:

WHEREAS, the Agency has established a financial assistance program under the authority granted by M.G.L. c. 29, §2III and regulations issued under 301 CMR 15.00; and

WHEREAS, the Borrower has requested a loan from the Agency in the amount of \$ XXX,000.00 (hereinafter referred to as the “Loan”) for the purposes of meetings its obligations under contract \_\_\_\_\_ (contract number) and, to evidence the indebtedness to be incurred thereby, has duly authorized the issuance of its bonds in the principal amount of the Loan. These bonds are general obligation bonds (“Municipal Bonds”) which are to be issued to and held by the Agency in accordance with this Loan Agreement; and

WHEREAS, the Agency may finance the Loan from the Dam and Seawall Repair or Removal Fund as well as other sources of state and federal funds which are subject to certain limitations as to investment and application;

NOW THEREFORE, the parties hereto agree as follows:

### 1. THE LOAN AND THE BONDS

The Agency hereby agrees to make the Loan and the Borrower hereby agrees to accept the Loan to evidence its obligation to repay the loan by issuing to the Agency the bonds in the principal amount of the Loan, and substantially in the form attached hereto as Exhibit A. The Loan bears an interest rate of **X%**.

### 2. REPRESENTATION AND WARRANTIES

The Borrower represents and warrants as follows: (a) it has duly adopted all necessary votes and resolutions and has taken all proceeds required by law to enable it to enter into the Loan Agreement and issue its bonds to the Agency to evidence its obligation to pay the Loan; (b) the bonds have been duly authorized, executed and delivered by the Borrower constitute valid and binding obligations of the borrower, enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights heretofore or hereafter enacted and general equity principals; (c) the bonds constitute a general obligation of the Borrower to which its full faith and credit is pledged; (d) all permits and approvals necessary to construct the project being financed by the funds awarded in the contract (the "Project"), given the current status of the project, have been obtained and remain in full force and effect; and (e) no litigation before or by any court, public board or body is pending or threatened against the Borrower seeking to restrain or enjoin the issuance of the bonds or the construction of the Project.

### 3. COVENANTS

The Borrower agrees that until the Loan shall be paid in full, and the proceeds of the Loan, together with the earnings thereon, shall be expended in full, it shall perform the following covenants: (a) it shall make the payments with the respect to the principal of the bond in forty equal annual installments, all at the time and in the amounts set forth in the bond; (b) it shall notify the Agency in writing, from time to time, of the name of the official of the Borrower to whom invoices for the payment of principal should be addressed if different from the address set forth in paragraph 8; and (c) it shall furnish the Agency annually such information regarding the Borrower's progress on project implementation thereof, including project status and expenditure reports and evidence of compliance with any applicable permits and any other financial or project information as the Agency may reasonably request.

### 4. OPINION OF BOND COUNSEL

Attached hereto as Exhibit B is an opinion of bond counsel or other local counsel to the Borrower to effect the (i) bonds have been duly authorized, executed and delivered by the Borrower and constitute a valid and binding general obligations of the Borrower, enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, and moratorium, reorganization or other laws affecting creditors' rights heretofore and hereafter enacted and to general equity principals, and (ii) in the case of Municipal Bonds, they constitute a general obligation to which the municipality's full faith and credit is pledged.

5. APPLICATION OF GRANT AND LOAN MONEYS

(a) The Agency shall deposit the amount of the Loan in single account (the “Account”) separated from its other moneys. Such Account shall be invested with Massachusetts Municipal Depository Trust (MMDT) or in such other manner as may be approved by the Agency from time to time in the Agency’s reasonable discretion. Earnings on the account shall be retained in such Account. The Borrower shall arrange for copies of all investments reports with respect to the Account to be furnished in a timely fashion to the Agency.

(b) The proceeds, together with the earnings thereon shall be applied to the costs of the project.

(c) The Borrower shall repay to the Agency the unexpended balance in any account established pursuant to Section 5(a) hereof on or before April 19, 2014 or thereafter shall invest such expended balance in accordance with the directions of the Agency in order to assure compliance with the applicable provisions of the Code.

6. PREPAYMENT OF LOAN

The Agency shall have the right to cancel all or any part of its obligations hereunder and the Borrower shall be obligated to repay all of the Proceeds previously disbursed to it which remain unexpended, together with any earnings on the Proceeds, upon the Agency’s request if: (a) any representations made by the Borrower to the Agency in connection with its application for Agency assistance shall be incorrect or incomplete in any material respect; or (b) the Borrower is in (i) default of any of its obligations hereunder to make payments on the bonds as and when the same shall become due and payable or (ii) in default of any other covenant or agreement on its part contained herein and such default shall continue for thirty (30) days after written notice from the Agency specifying the default and requesting that the same be remedied.

In addition to the foregoing provisions, the Borrower may prepay the Loan upon thirty (30) days written notice to the Agency. Except as expressly provided herein, all prepayments shall be without penalty.

The Borrower shall remain liable after any prepayment for the unpaid principal on the bond. Any prepayment shall be applied to the installments of principal due in inverse chronological order.

7. NOTICES

Any notices to be delivered under this Loan Agreement shall be effective upon receipt and shall be given by certified mail, return receipt requested to:

As to the Agency:

John Clarkeson  
Fund Director  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street – Suite 900  
Boston, MA 02114

DAM AND SEAWALL REPAIR OR REMOVAL FUND

CONTRACTOR: TOWN OF XYYYYVVXXVILLE, MA

PROJECT NUMBER: 50-20YR-TYPE-#

As to the Borrower:

\_\_\_\_\_  
Title  
Town of XYYYYVVXXville  
232 Utopia Street  
XXXXYVVXXville, MA 020XX

8. SEVERABILITY

If any provisions of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provisions shall not affect any of the remaining provisions of the Loan Agreement and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provisions had not been contained herein.

9. COUNTERPARTS

This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

10. NO WAIVER

No waiver by either party of any term or conditions of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Loan Agreement.

11. INTEGRATION

This Loan Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between parties hereto in respect hereof.

DAM AND SEAWALL REPAIR OR REMOVAL FUND

CONTRACTOR: TOWN OF XXXYVVXXVILLE, MA

PROJECT NUMBER: 50-20YR-TYPE-#

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and the year first above written.

(SEAL)

Executive Office of Energy and Environmental Affairs

Attest:

\_\_\_\_\_  
(Witness), Title

By \_\_\_\_\_  
Authorized Signature, Title

(SEAL)

BORROWER

\_\_\_\_\_  
(Witness), Title

By \_\_\_\_\_  
Authorized Signature, Title